HIGH OF UTTARANCHAL AT NAINITAL

Writ Petition No. 436 (M/S) of 2005

1. Abid S/o Late Mohd. Hanif.
2. Afzal S/o Late Mohd. Hanif

Both R/o Village –Kottwal, Alamour,
Pargarna-Manglaur, Tehsil Roorkee,
District Haridwar. .....Petitioners.

Vs

1. Kalam Singh S/o Sri Tungal Singh.
2. Pradeep S/o Sri Rampal Singh.
3. Mohakam Singh S/o Sri Ghasita,

All R/o Village-Chondahedi,
Pargana, Nagal, Tehsil-Deoband,
District-Saharanpur. .....Respondents

Sri Rajendra Singh learned counsel for the petitioner.
Sri Lok Pal Singh learned counsel for the respondent No.3
Sri Nand Prasad learned counsel for the respondents.

Dated:- 09-03-2006

Hon'ble B.S. Verma, J.

Heard Sri Rajendra Singh learned counsel for the petitioner, Sri Lok Pal Singh learned counsel for the respondent No. 3 and Sri Nand Prasad, learned standing counsel for the State.

Learned counsel for the respondent has raised this issue that the writ petition is not maintainable in view of Proviso of amended Section 115 of the Code Civil Procedure is quoted below:-

> *(1)* *"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision,*

would have finally disposed of the suit or other proceedings"

The suit of plaintiff/petitioner was decreed ex-party against which the respondent filed an application under order 9 Rule 13 which was allowed by the impugned order dated 5-3-2005 (Annexure-8) to the writ petition. By plain reading of Section 115, as it stands makes it clear whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is yes then the revision is maintainable.

The petitioner has alternative statutory remedy available to him to file a revision for setting aside the impugned order. On the ground of alternative remedy, the writ petition is dismissed in limine. Interim order dated 4-5-2005 is vacated. However, the petitioner may pursue appropriate remedy available to him according to law.

Office is directed to return the certified copy which was filed in this writ petition by the petitioner.

(B.S. Verma, J.)

Dated:-09-03-2006
M.K.